

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

CASE NO.

CHRISTOPHER W. LEGG,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

LABORATORY CORPORATION OF
AMERICA HOLDINGS, a Delaware
corporation,

Defendant.

CLASS ACTION

JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR
VIOLATIONS OF THE FAIR AND ACCURATE CREDIT
TRANSACTIONS ACT, 15 U.S.C. § 1681c(g)**

Plaintiff Christopher W. Legg (“Plaintiff”), on behalf of himself and other similarly situated individuals, alleges the following, in relevant part, upon information and belief, and his own personal knowledge.

I. NATURE FOF THE CASE

1. This class action complaint is based upon Defendant’s violations of the Fair and Accurate Credit Transactions Act (“FACTA”) amendment to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, as amended (the “FCRA”). Specifically, this action is based upon Section 1681c(g) of the FCRA which states

that, “no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.” Despite the clear language of the statute, Defendant simply and willfully chose not to comply with the FCRA. As such, all consumers who purchase goods and services from Defendant using a credit or debit card suffered violations of Section 1681c(g), have been uniformly burdened with an elevated risk of identity theft, and are entitled to an award of statutory damages.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1681p, and 28 U.S.C. §§ 1331 and 1337 because the claims in this action arise under violation of a federal statute.

3. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred here. Defendant does business in this District and its contacts here are sufficient to subject it to personal jurisdiction.

III. PARTIES

4. Plaintiff Christopher W. Legg (“Plaintiff”) is a natural person, who resides in the State of Florida, Broward County.

5. Defendant, Laboratory Corporation of America Holdings (“LabCorp” or “Defendant”), is a Delaware corporation whose principal office is located at 231 Maple Avenue, Burlington, NC 27216, and whose registered agent for service of process in the State of Florida is Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301.

IV. FACTUAL ALLEGATIONS

A. Statutory Background

6. In 2003, FACTA was enacted by Congress, and signed into law by President George W. Bush. One of FACTA’s primary purposes was to amend the FCRA through the addition of identity theft protections for consumers.

7. One such FACTA provision was specifically designed to thwart identity thieves’ ability to gain sensitive information regarding a consumer’s credit or bank account from a receipt provided to the consumer during a point of sale transaction, which, through any number of ways, could fall into the hands of someone other than the consumer.

8. Codified at 15 U.S.C. § 1681c(g), this provision states the following:

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.

(hereinafter, the “Receipt Provision”).

9. After enactment, FACTA provided three years in which to comply with its requirements, mandating full compliance with its provisions no later than December 4, 2006.

10. According to data from the Federal Trade Commission's 2012 Consumer Sentinel Network report, Florida ranks No. 1 for identity theft among the 50 states, with 361.3 complaints per 100,000 people. That's 86 percent more than Georgia, which ranks a distant second. Also, nine of the top 10 metro areas for identity theft are in Florida, according to the report. First is the Miami area with 645.4 complaints per 100,000 people.¹

11. So problematic is the crime of identity theft that the three main credit reporting agencies, Experian, Equifax, and Transunion, joined to set-up a free website (<<http://www.annualcreditreport.com>>) in order to comply with FACTA requirements and to provide the citizens of this country with a means of monitoring their credit reports for possible identity theft.

B. Plaintiff's Factual Allegations

12. On July 3, 2014, Plaintiff visited Defendant's Hollywood, Florida location at which time he paid, using a VISA[®] credit card, for routine laboratory tests. Upon making payment, he was provided with an electronically printed receipt which included the expiration date of Plaintiff's credit card.

¹ <http://www.wptv.com/money/consumer/identity-theft-florida-ranks-no-1-in-nation-for-id-theft> (Last accessed: July 6, 2013).

C. Defendant's Misdeeds

13. At all times relevant herein, Defendant was acting by and through its agents, servants and/or employees, each of which were acting within the course and scope of their agency or employment, and under the direct supervision and control of the Defendant.

14. At all times relevant herein, the conduct of the Defendant, as well as that of its agents, servants and/or employees, was in willful and reckless disregard for federal law and the rights of the Plaintiff.

15. It is Defendant's policy and procedure to issue an electronically printed receipt to individuals at the point of sale – *i.e.*, immediately upon receipt of credit card payment.

16. Consistent with Defendant's policy and procedure, Defendant knowingly and intentionally includes credit and debit card expiration dates on its electronically printed receipts.

17. Along with the expiration date, the receipt generated at the point of sale also displays certain other sensitive information, including the consumer's name, address, telephone number, type of credit card, and date of service.

18. The expiration dates are not printed accidentally; upon information and belief, the equipment and software used to print the receipts must be

programmed to display certain information, and likewise, programmed not to display certain information.

19. The fact that Defendant chose to comply with the credit card *number* redaction requirement is highly suggestive of the fact that LabCorp had knowledge of the statute's requirements. Moreover, unlike some more nebulous FACTA-related issues (*e.g.*, whether the statute covers "membership cards" – *See Hammer v. Sam's East, Inc.*, No. 13-3724 (8th Cir., June 5, 2014)), the requirement to redact expiration dates could not be any more straightforward - the statute expressly prohibits display of a credit card's expiration date, *supra*.

20. Upon information and belief, the FTC specifically alerted businesses about the truncation requirement; major credit card issuers (*e.g.*, American Express) also explicitly instructed merchants on the requirements of FACTA, and; Defendant therefore would have received multiple notices regarding the truncation requirement and the importance of identity theft.

21. Moreover, at some point prior to the filing of this complaint, Defendant retained the services of the international law firm, Jones Day, who advised the Defendant regarding certain FACTA requirements specifically related to identity theft.²

² <http://www.jonesday.com/experiencepractices/ExperienceDetail.aspx?experienceid=24830> (Last accessed: July 6, 2014).

22. Notwithstanding the fact that it has had years to comply, Defendant continues to issue receipts at points of sale transaction, which contain the expiration date of credit or debit cards, in direct violation of the Receipt Provision of the FCRA.

23. Notwithstanding the Receipt Provision, Defendant continues to deliberately, willfully, intentionally, and/or recklessly violate FACTA by issuing receipts which to not comply with the FCRA.

24. Notwithstanding the Receipt Provision and the fact that it had years to comply, Defendant continues to act in conscious disregard for the rights of others.

25. In sum, Defendant knowingly and intentionally violated the Receipt Provision of FACTA, in conscious disregard for the rights and privacy concerns of others, and in doing so, committed willful violation of the FACTA provision of the FCRA. *See Reynolds v. Hartford Financial Services Grp.*, 435 F.3d 1081, 1098 (9th Cir. 2006).

V. CLASS ACTION ALLEGATIONS

26. This action is also brought as a Class Action under Fed. R. Civ. P. 23. Plaintiff proposes the following class, defined as follows, subject to modification by the Court as required:

(i) All persons in the United States (ii) who, when making payment to LabCorp, (iii) made such payment using a credit or debit card, (iv) and within the five (5) years prior to the filing of the complaint (v) were provided

with a receipt of the payment (vi) which displayed the expiration date of said credit or debit card.

27. The named Plaintiff falls within the Class definition and is a member of the class. Excluded from the Class are Defendant and any entities in which Defendant has a controlling interest, Defendant's agents and employees, Plaintiff's attorneys and their employees, the Judge to whom this action is assigned and any member of the Judge's staff and immediate family, and claims for personal injury, wrongful death, and/or emotional distress.

A. Certification Under Either Rule 23(b)(2) or (b)(3) is Proper.

28. The members of the class are capable of being described without managerial or administrative problems. The members of the class are readily ascertainable from the information and records in the possession, custody or control of Defendant.

29. Defendant is a major provider of laboratory related services throughout the United States. Plaintiff states, upon information and belief that Defendant processes laboratory tests on approximately 470,000 specimens per day.³ Therefore, it is reasonable to conclude that the class is sufficiently numerous such that individual joinder of all members is impractical. The disposition of the claims in a class action will provide substantial benefit to the parties and the Court

³ <https://www.labcorp.com/wps/portal/aboutus/> (Last accessed: July 6, 2014)

in avoiding a multiplicity of identical suits. The Class can be identified through Defendant's records or Defendant's agents' records.

30. There are common questions of law and fact which predominate over any questions affecting only the individual members of the classes. The wrongs alleged against Defendants are statutory in nature and common to each and every member of the respective classes.

31. This suit seeks only statutory damages and injunctive relief on behalf of the Class and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

32. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions that may affect individual Class members, including the following:

- a. Whether, within the five years prior to the filing of this Complaint, Defendant and/or their agents accepted payment by credit or debit card from any consumer and subsequently gave that consumer a printed receipt upon which the expiration date of the card was printed;
- b. Whether Defendant's conduct was willful and reckless;

- c. Whether Defendant is liable for damages, and the extent of statutory damages for each such violation; and
- d. Whether Defendant should be enjoined from engaging in such conduct in the future.

33. As a person that utilized Defendant's laboratory services and received a receipt upon which the expiration date of his card was printed, Plaintiff is asserting claims that are typical of the proposed Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

34. The principal question is whether the Defendant violated section 1681c(g) of the FCRA by providing class members with electronically printed receipts in violation of the Receipt Provision. The secondary question is whether it is Defendant's policy and practice to provide such electronically printed receipts to consumers that make payment using a credit or debit card, despite the advice of one of the nation's largest law firms, and whether this policy and practice constitutes willful noncompliance of the FCRA.

35. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law would be allowed to proceed without remedy and

Defendant would undoubtedly continue such illegal conduct. Because of the size of the individual Class members' claims, few Class members could afford to seek legal redress for the wrongs complained of herein.

36. Defendant's defenses are and will be typical of and the same or identical for each of the members of the class and will be based on the same legal and factual theories. There are no unique defenses to any of the class members' claims.

37. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small. The maximum statutory damages in an individual action for a violation of this statute is minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

COUNT I – VIOLATIONS OF 15 U.S.C. § 1681(c)(g)

38. 15 U.S.C. §1681c(g) states as follows:

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business

shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.

39. This section applies to any “device that electronically prints receipts” (hereafter “Devices”) for point of sale transactions. 15 U.S.C. §1681c(g)(3).

40. Defendant employs the use of said Devices for point of sale transactions at the various locations of Defendant.

41. On or before the date on which this complaint was filed, Plaintiff and members of the Class were provided receipt(s) by Defendant that failed to comply with the Receipt Provision.

42. At all times relevant to this action, Defendant was aware, or should have been aware, of both the Receipt Provision as well as the need to comply with said provision.

43. Notwithstanding the three year period to prepare for FACTA and its accompanying provisions, including but not limited to the Receipt Provision; knowledge of the Receipt Provision and FACTA as a whole; and the actions of Defendant’s peers and competitors, Defendant knowingly, willfully, intentionally, and/or recklessly violated and continues to violate the FCRA and the Receipt Provision.

44. As a result of Defendant’s willful violations of the FCRA, Plaintiff and members of the Class continue to be exposed to an elevated risk of identity

theft. Defendant is liable to Plaintiff and members of the Class pursuant to 15 U.S.C. § 1681n for statutory damages, punitive damages, attorney's fees and costs.

WHEREFORE, Plaintiff Christopher W. Legg respectfully requests that this Court enter judgment in his favor and against Defendant Laboratory Corporation of America Holdings for:

- a. Statutory damages;
- b. Punitive damages;
- c. Injunctive relief;
- d. Attorneys' fees, litigation expenses and costs of suit, and
- e. Such other and further relief as the Court deems proper under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all counts.

Dated: July 6, 2014.

Respectfully submitted,

By: /s/ Scott D. Owens
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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
CHRISTOPHER W. LEGG,
individually and on behalf of all others similarly situated,
(b) County of Residence of First Listed Plaintiff Broward County (FL)
(c) Attorneys (Firm Name, Address, and Telephone Number)
Scott D. Owens, Esq. / SCOTT D. OWENS, P.A.
664 E. Hallandale Beach Blvd. / Hallandale Beach, FL 33009
(954) 589-0588

DEFENDANTS
LABORATORY CORPORATION OF AMERICA HOLDINGS,
a Delaware corporation,
County of Residence of First Listed Defendant Alamance County (NC)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1681 et seq.
Brief description of cause:
Violation of the FCRA

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 07/06/2014 SIGNATURE OF ATTORNEY OF RECORD s/ Scott D. Owens

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

CHRISTOPHER W. LEGG, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

LABORATORY CORPORATION OF AMERICA HOLDINGS, a Delaware corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) LABORATORY CORPORATION OF AMERICA HOLDINGS c/o Registered Agent Corporation Service Company 1201 Hays Street Tallahassee, FL 32301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott D. Owens, Esq. SCOTT D. OWENS, P.A. 664 E. Hallandale Beach Blvd. Hallandale Beach, FL 33009 scott@scottdowens.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: